

§ 7108. Rejection of applications

An application for review on appeal shall not be entertained unless it is in conformity with this chapter.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1243, § 4008; renumbered § 7108, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4008 of this title as this section.

§ 7109. Independent medical opinions

(a) When, in the judgment of the Board, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in an appeal case, the Board may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Board shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Board.

(Added Pub. L. 87-871, § 1, Sept. 19, 1962, 76 Stat. 557, § 4009; amended Pub. L. 100-687, div. A, title I, § 103(b), Nov. 18, 1988, 102 Stat. 4107; renumbered § 7109, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

Notes

Additional notes relating to this renumbered section are set out in the main edition under predecessor section 4009 of this title.

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4009 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration" in two places.

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

CROSS REFERENCES

Disclosure of papers and documents relating to claims to independent medical experts, see section 5701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5701 of this title.

§ 7110. Traveling sections

A claimant may request a hearing before a traveling section of the Board. Any such hear-

ing shall be scheduled for hearing before such a section within the area served by a regional office of the Department in the order in which the requests for hearing are received by the Department with respect to hearings in that area.

(Added Pub. L. 100-687, div. A, title II, § 207(a), Nov. 18, 1988, 102 Stat. 4111, § 4010; renumbered § 7110, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, § 4(a)(3), (4), Aug. 6, 1991, 105 Stat. 404.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4110 of this title as this section.

Pub. L. 102-83 substituted "Department" for "Veterans' Administration" in two places.

EFFECTIVE DATE

Section effective Jan. 1, 1989, see section 401(d) of Pub. L. 100-687, set out as a note under section 7251 of this title.

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AMENDMENTS

1991—Pub. L. 102-82, § 2(b), Aug. 6, 1991, 105 Stat. 375, added item 7286.

Pub. L. 102-40, title IV, § 402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 4051 to 4098 as 7251 to 7298, respectively.

1989—Pub. L. 101-94, title I, § 101(b), Aug. 16, 1989, 103 Stat. 625, added subchapter V heading and items 4096 to 4098.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 502, 511 of this title.

SUBCHAPTER I—ORGANIZATION AND JURISDICTION

§ 7251. Status

There is hereby established, under Article I of the Constitution of the United States, a court of record to be known as the United States Court of Veterans Appeals.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4113, § 4051; renumbered § 7251, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4051 of this title as this section.

EFFECTIVE DATE

Section 401 of Pub. L. 100-687, as amended by Pub. L. 101-94, title III, § 301, Aug. 16, 1989, 103 Stat. 628, provided that:

“(a) **GENERAL EFFECTIVE DATE.**—Except as otherwise provided in this section, this division (and the amendments made by this Act) [div. A (§§ 1-403) of Pub. L. 100-687, known as the ‘Veterans’ Judicial Review Act’, see Tables for classification] shall take effect on September 1, 1989.

“(b) **EFFECTIVE DATE FOR CERTAIN TRANSITION PROVISIONS.**—The amendment made by section 201(a) [amending section 4001 [now 7101] of this title] shall take effect on February 1, 1989.

“(c) **DATE OF ENACTMENT.**—Sections 201 (other than subsection (a)), 208, 209, 302, and 303, and the amendments made by those sections [see Tables for classification], shall take effect on the date of the enactment of this Act [Nov. 18, 1988].

“(d) **BOARD OF VETERANS’ APPEALS.**—Sections 202, 203, 205, 206, and 207 [see Tables for classification] shall take effect as of January 1, 1989. Section 204 [amending section 4004 [now 7104] of this title] shall take effect on September 1, 1989.

“(e) **COMMENCEMENT OF OPERATION OF COURT OF VETERANS APPEALS.**—Notwithstanding subsection (a), the United States Court of Veterans Appeals established pursuant to chapter 72 of title 38, United States Code (as added by section 301) shall not begin to operate until at least three judges have been appointed to the court.”

CHAPTER APPLICABLE TO CASES FILED ON OR AFTER NOVEMBER 18, 1988

Section 402 of Pub. L. 100-687, as amended by Pub. L. 102-40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239, provided that: “Chapter 72 of title 38, United States Code, as added by section 301, shall apply with respect to any case in which a notice of disagreement is filed under section 7105 [formerly 4005] of title 38, United States Code, on or after the date of the enactment of this Act [Nov. 18, 1988].”

§ 7252. Jurisdiction; finality of decisions

(a) The Court of Veterans Appeals shall have exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals. The Secretary may not seek review of any such decision. The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

(b) Review in the Court shall be on the record of proceedings before the Secretary and the Board. The extent of the review shall be limited to the scope provided in section 7261 of this title. The Court may not review the schedule of ratings for disabilities adopted under section 1155 of this title or any action of the Secretary in adopting or revising that schedule.

(c) Decisions by the Court are subject to review as provided in section 7292 of this title.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4113, § 4052; renumbered § 7252 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, § 14(e)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §§ 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406.)

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4052 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator”.

Pub. L. 102-54 amended subsec. (a) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “Court” for “court” in last sentence.

Subsec. (b). Pub. L. 102-83, § 5(c)(1), substituted “1155” for “355”.

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-40, § 402(d)(1), substituted “7281” for “4061”.

Subsec. (c). Pub. L. 102-40, § 402(d)(1), substituted “7292” for “4092”.

§ 7253. Composition

(a) The Court of Veterans Appeals shall be composed of a chief judge and at least two and not more than six associate judges.

(b) The judges of the Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office. A person may not be appointed to the Court who is not a member in good standing of the bar of a Federal court or of the highest court of a State. Not more than the number equal to the next whole number greater than one-half of the number of judges of the Court may be members of the same political party.

(c) The term of office of the judges of the Court of Veterans Appeals shall be 15 years.

(d) The chief judge is the head of the Court.

(e)(1) The chief judge of the Court shall receive a salary at the same rate as is received by judges of the United States Courts of Appeals.

(2) Each judge of the Court, other than the chief judge, shall receive a salary at the same rate as is received by judges of the United States district courts.

(f)(1) A judge of the Court may be removed from office by the President on grounds of misconduct, neglect of duty, or engaging in the practice of law. A judge of the Court may not be removed from office by the President on any other ground.

(2) Before a judge may be removed from office under this subsection, the judge shall be provided with a full specification of the reasons

for the removal and an opportunity to be heard.

(g)(1) The Court shall prescribe rules, consistent with the provisions of section 372(c) of title 28, establishing procedures for the filing of complaints with respect to the conduct of any judge of the Court and for the investigation and resolution of such complaints. In investigating and taking action with respect to any such complaint, the Court shall have the powers granted to a judicial council under such section.

(2) The provisions of paragraphs (7) through (15) of section 372(c) of title 28, regarding referral or certification to, and petition for review in, the Judicial Conference of the United States and action thereon, shall apply to the exercise by the Court of the powers of a judicial council under paragraph (1) of this subsection. The grounds for removal from office specified in subsection (f)(1) shall provide a basis for a determination pursuant to paragraph (7) or (8) of section 372(c) of title 28, and certification and transmittal by the Conference shall be made to the President for consideration under subsection (f).

(3)(A) In conducting hearings pursuant to paragraph (1), the Court may exercise the authority provided under section 1821 of title 28 to pay the fees and allowances described in that section.

(B) The Court shall have the power provided under section 372(c)(16) of title 28 to award reimbursement for the reasonable expenses described in that section. Reimbursements under this subparagraph shall be made from funds appropriated to the Court.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4114, § 4053; amended Pub. L. 101-94, title I, § 102(c), Aug. 16, 1989, 103 Stat. 628; renumbered § 7253, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-82, § 3, Aug. 6, 1991, 105 Stat. 375; Pub. L. 102-585, title VIII, § 801, Nov. 4, 1992, 106 Stat. 4980.)

Notes

Additional notes relating to this renumbered section are set out in the main edition under predecessor section 4053 of this title.

AMENDMENTS

1992—Subsec. (g). Pub. L. 102-585 designated existing provisions as par. (1) and added pars. (2) and (3).
1991—Pub. L. 102-40 renumbered section 4053 of this title as this section.

Subsec. (g). Pub. L. 102-82 added subsec. (g).

1980—Subsec. (f)(1). Pub. L. 101-94 inserted "or" before "engaging" and substituted "law" for "law, or physical or mental disability which, in the opinion of the President, prevents the proper execution of the judge's duties".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7297 of this title.

§ 7254. Organization

(a) The Court of Veterans Appeals shall have a seal which shall be judicially noticed.

(b) The Court may hear cases by judges sitting alone or in panels, as determined pursuant

to procedures established by the Court. Any such panel shall have not less than three judges. The Court shall establish procedures for the assignment of the judges of the Court to such panels and for the designation of the chief of each such panel.

(c)(1) A majority of the judges of the Court shall constitute a quorum for the transaction of the business of the Court. A vacancy in the Court shall not impair the powers or affect the duties of the Court or of the remaining judges of the Court.

(2) A majority of the judges of a panel of the Court shall constitute a quorum for the transaction of the business of the panel. A vacancy in a panel of the Court shall not impair the powers or affect the duties of the panel or of the remaining judges of the panel.

(d) In the event of a vacancy in the position of chief judge of the Court, the associate judge senior in service on the Court shall serve as acting chief judge unless the President designates one of the other associate judges to serve as acting chief judge, in which case the judge so designated shall serve as acting chief judge.

(e) Judges of the Court shall have the authority to administer oaths.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4114, § 4054; amended Pub. L. 101-94, title IV, § 402, Aug. 16, 1989, 103 Stat. 628; Pub. L. 101-237, title VI, § 602(b), Dec. 18, 1989, 103 Stat. 2095; renumbered § 7254, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, § 14(e)(4), June 13, 1991, 105 Stat. 287; Pub. L. 102-82, § 8(3), Aug. 6, 1991, 105 Stat. 377.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4054 of this title as this section.

Subsecs. (d), (e). Pub. L. 102-54 amended section as in effect immediately before the enactment of Pub. L. 102-40, and Pub. L. 102-82 amended section, identically, by redesignating the second subsec. (d), relating to authority to administer oaths as, (e).

1989—Subsec. (d). Pub. L. 101-237 added subsec. (d) relating to authority to administer oaths.

Pub. L. 101-94 added subsec. (d) relating to acting chief judge in event of vacancy.

§ 7255. Offices

The principal office of the Court of Veterans Appeals shall be in the District of Columbia, but the Court may sit at any place within the United States.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4114, § 4055; renumbered § 7255, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

Notes

Additional notes relating to this renumbered section are set out in the main edition under predecessor section 4055 of this title.

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4055 of this title as this section.

FACILITIES FOR COURT OF VETERANS APPEALS

Pub. L. 101-94, title II, § 201, Aug. 16, 1989, 103 Stat. 626, provided that:

"(a) **SPACE IN THE DISTRICT OF COLUMBIA.**—The Administrator of General Services shall provide suitable building space in the District of Columbia for the United States Court of Veterans Appeals as the Court's principal place of business. The Administrator shall, if necessary, arrange for temporary space for the Court if permanent space is not immediately available for the Court. The Administrator shall place a high priority on the provision of such temporary and permanent space for the Court.

"(b) **APPROVAL BY COURT.**—Any space to be provided for the Court of Veterans Appeals under subsection (a) must be acceptable to the Court.

"(c) **ADDITIONAL REQUIREMENT.**—Any building space provided to the Court under subsection (a) shall be adjacent to additional building space (in an amount acceptable to the Court) that can be made available to the Court in the future if needed for expansion of the facilities of the Court."

§ 7256. Times and places of sessions

The times and places of sessions of the Court of Veterans Appeals shall be prescribed by the chief judge.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4115, § 4056; renumbered § 7256, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4050 of this title as this section.

SUBCHAPTER II—PROCEDURE

§ 7261. Scope of review

(a) In any action brought under this chapter, the Court of Veterans Appeals, to the extent necessary to its decision and when presented, shall—

(1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary;

(2) compel action of the Secretary unlawful, withheld or unreasonably delayed;

(3) hold unlawful and set aside decisions, findings (other than those described in clause (4) of this subsection), conclusions, rules, and regulations issued or adopted by the Secretary, the Board of Veterans' Appeals, or the Chairman of the Board found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law; and

(4) in the case of a finding of material fact made in reaching a decision in a case before the Department with respect to benefits under laws administered by the Secretary, hold unlawful and set aside such finding if the finding is clearly erroneous.

(b) In making the determinations under subsection (a) of this section, the Court shall take due account of the rule of prejudicial error.

(c) In no event shall findings of fact made by the Secretary or the Board of Veterans' Appeals be subject to trial de novo by the Court.

(d) When a final decision of the Board of Veterans' Appeals is adverse to a party and the sole stated basis for such decision is the failure of the party to comply with any applicable regulation prescribed by the Secretary, the Court shall review only questions raised as to compliance with and the validity of the regulation.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4115, § 4061; amended Pub. L. 101-237, title VI, § 602(c), Dec. 18, 1989, 103 Stat. 2095; renumbered § 7261, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, § 14(e)(3), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, § 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4061 of this title as this section.

Subsec. (a)(1) to (3). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (a)(4). Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-83, § 4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "Court" for "court".

Subsec. (d). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

1989—Subsec. (a)(2). Pub. L. 101-237 inserted "or unreasonably delayed" after "withheld".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7252 of this title.

§ 7262. Fee for filing appeals

(a) The Court of Veterans Appeals may impose a fee of not more than \$50 for the filing of any appeal with the Court. The Court shall establish procedures under which such a fee may be waived in the case of an appeal filed by or on behalf of a person who demonstrates that the requirement that such fee be paid will impose a hardship on that person. A decision as to such a waiver is final and may not be reviewed in any other court.

(b) The Court may from time to time adjust the maximum amount permitted for a fee imposed under subsection (a) of this section based upon inflation and similar fees charged by other courts established under Article I of the Constitution.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4115, § 4062; renumbered § 7262, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4062 of this title as this section.

§ 7263. Representation of parties; fee agreements

(a) The Secretary shall be represented before the Court of Veterans Appeals by the General Counsel of the Department.

(b) Representation of appellants shall be in accordance with the rules of practice prescribed by the Court under section 7264 of this title. In addition to members of the bar admitted to practice before the Court in accordance with such rules of practice, the Court may allow other persons to practice before the Court who meet standards of proficiency prescribed in such rules of practice.

(c) A person who represents an appellant before the Court shall file a copy of any fee agreement between the appellant and that person with the Court at the time the appeal is filed. The Court, on its own motion or the motion of any party, may review such a fee agreement.

(d) In reviewing a fee agreement under subsection (c) of this section or under section 5904(c)(2) of this title, the Court may affirm the finding or order of the Board and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable. An order of the Court under this subsection is final and may not be reviewed in any other court.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4116, § 4063; renumbered § 7263 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4063 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, § 4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Subsec. (b). Pub. L. 102-40, § 402(d)(1), substituted "7264" for "4064".

Subsec. (d). Pub. L. 102-40, § 402(d)(1), substituted "5904(c)(2)" for "3404(c)(2)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5904 of this title.

§ 7264. Rules of practice and procedure

(a) The proceedings of the Court of Veterans Appeals shall be conducted in accordance with such rules of practice and procedure as the Court prescribes.

(b) The mailing of a pleading, decision, order, notice, or process in respect of proceedings before the Court shall be held sufficient service of such pleading, decision, order, notice, or process if it is properly addressed to the address furnished by the appellant on the notice of appeal filed under section 7266 of this title.

(c) Section 455 of title 28 shall apply to judges and proceedings of the Court.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4116, § 4064; re-

numbered § 7264 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-82, § 4, Aug. 6, 1991, 105 Stat. 376.)

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4064 of this title as this section.

Subsec. (b). Pub. L. 102-40, § 402(d)(1), substituted "7266" for "4066".

Subsec. (c). Pub. L. 102-82 added subsec. (c).

INTERIM RULES OF COURT OF VETERANS APPEALS

Pub. L. 101-94, title II, § 203, Aug. 16, 1989, 103 Stat. 627, provided that: "The Federal Rules of Appellate Procedure (28 U.S.C. App.) shall be the interim rules of the United States Court of Veterans Appeals unless otherwise provided by the Court in accordance with chapter 72 of title 38, United States Code. If there is a conflict between a provision of the Federal Rules of Appellate Procedure and the procedures set forth in chapter 72 of title 38, United States Code, the procedures set forth in such chapter shall apply."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7263 of this title.

§ 7265. Contempt authority; assistance to the Court

(a) The Court shall have power to punish by fine or imprisonment such contempt of its authority as—

(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(b) The Court shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for a district in which the Court is sitting shall, if requested by the chief judge of the Court, attend any session of the Court in that district.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4116, § 4065; renumbered § 7265, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4065 of this title as this section.

§ 7266. Notice of appeal

(a) In order to obtain review by the Court of Veterans Appeals of a final decision of the Board of Veterans' Appeals, a person adversely affected by that action must file a notice of appeal with the Court. Any such notice must be filed within 120 days after the date on which notice of the decision is mailed pursuant to section 7104(e) of this title.

(b) The appellant shall also furnish the Secretary with a copy of such notice, but a failure to do so shall not constitute a failure of timely compliance with subsection (a) of this section.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4116, § 4066; renumbered § 7266 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

Notes

Additional notes relating to this renumbered section are set out in the main edition under predecessor section 4066 of this title.

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4066 of this title as this section.

Subsec. (a). Pub. L. 102-40, § 402(d)(1), substituted "7104(e)" for "4004(e)".

Subsec. (b). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7264 of this title.

§ 7267. Decisions

(a) A decision upon a proceeding before the Court of Veterans Appeals shall be made as quickly as practicable. In a case heard by a panel of the Court, the decision shall be made by a majority vote of the panel in accordance with the rules of the Court. The decision of the judge or panel hearing the case so made shall be the decision of the Court.

(b) A judge or panel shall make a determination upon any proceeding before the Court, and any motion in connection with such a proceeding, that is assigned to the judge or panel. The judge or panel shall make a report of any such determination which constitutes the judge or panel's final disposition of the proceeding.

(c) The Court shall designate in its decision in any case those specific records of the Government on which it relied (if any) in making its decision. The Secretary shall preserve records so designated for not less than the period of time designated by the Archivist of the United States.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4117, § 4067; renumbered § 7267, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-82, §§ 1, 8(1), Aug. 6, 1991, 105 Stat. 375, 377; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4067 of this title as this section.

Subsec. (a). Pub. L. 102-82, § 1(3), struck out before period at end "except as provided in subsection (d) of this section".

Subsec. (b). Pub. L. 102-82, § 1(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: "The Court shall include in its decision a statement of its conclusions of law and determinations as to factual matters."

Subsec. (c). Pub. L. 102-83 substituted "Secretary" for "Administrator".

Pub. L. 102-82, § 8(1), substituted "Archivist of the United States" for "Administrator of the National Archives and Records Administration".

Pub. L. 102-82, § 1(2), redesignated subsec. (e) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 102-82, § 1(1), struck out subsec. (d) which read as follows:

"(1) In the case of a proceeding determined by a single judge of the Court, the decision of the judge shall become the decision of the Court unless before the end of the 30-day period beginning on the date of the decision by the judge the Court, upon the motion of either party or on its own initiative, directs that the decision be reviewed by a panel of the Court. In such a case, the decision of the judge initially deciding the case shall not be a part of the record.

"(2) In the case of a proceeding determined by a panel of the Court, the decision of the panel shall become the decision of the Court unless before the end of the 30-day period beginning on the date of the decision by the panel the Court, upon the motion of either party or on its own initiative, directs that the decision be reviewed by an expanded panel of the Court (or the Court en banc). In such a case, the decision of the panel initially deciding the case shall not be a part of the record."

Subsec. (e). Pub. L. 102-82, § 1(2), redesignated subsec. (e) as (c).

§ 7268. Availability of proceedings

(a) Except as provided in subsection (b) of this section, all decisions of the Court of Veterans Appeals and all briefs, motions, documents, and exhibits received by the Court (including a transcript of the stenographic report of the hearings) shall be public records open to the inspection of the public.

(b)(1) The Court may make any provision which is necessary to prevent the disclosure of confidential information, including a provision that any such document or information be placed under seal to be opened only as directed by the Court.

(2) After the decision of the Court in a proceeding becomes final, the Court may, upon motion of the appellant or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, submitted to the Court or the Court may, on its own motion, make such other disposition thereof as it considers advisable.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4117, § 4068; renumbered § 7268, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-82, § 8(2), Aug. 6, 1991, 105 Stat. 377.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4068 of this title as this section.

Subsec. (b)(2). Pub. L. 102-82 substituted "may, upon motion of the appellant or the Secretary," for "shall" and "or the Court" for "before the Court".

§ 7269. Publication of decisions

(a) The Court of Veterans Appeals shall provide for the publication of decisions of the Court in such form and manner as may be best adapted for public information and use. The Court may make such exceptions, or may authorize the chief judge to make such exceptions, to the requirement for publication in the preceding sentence as may be appropriate.

(b) Such authorized publication shall be competent evidence of the decisions of the Court of Veterans Appeals therein contained in all

courts of the United States and of the several States without any further proof or authentication thereof.

(c) Such publications shall be subject to sale in the same manner and upon the same terms as other public documents.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4069; renumbered § 7269, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4069 of this title as this section.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 7281. Employees

(a) The Court of Veterans Appeals may appoint a clerk without regard to the provisions of title 5 governing appointments in the competitive service. The clerk shall serve at the pleasure of the Court.

(b) The judges of the Court may appoint law clerks and secretaries, in such numbers as the Court may approve, without regard to the provisions of title 5 governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

(c) The clerk, with the approval of the Court, may appoint necessary deputies and employees without regard to the provisions of title 5 governing appointments in the competitive service.

(d) The Court may fix and adjust the rates of basic pay for the clerk and other employees of the Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5. To the maximum extent feasible, the Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

(e) In making appointments under subsections (a) through (c) of this section, preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(f) The Court may procure the services of experts and consultants under section 3109 of title 5.

(g) The Chief Judge of the Court may exercise the authority of the Court under this section whenever there are not at least two associate judges of the Court.

(h) The Court shall not be considered to be an agency within the meaning of section 3132(a)(1) of title 5.

(i) The Court may accept and utilize voluntary services and uncompensated (gratuitous) services, including services as authorized by section 3102(b) of title 5 and may accept, hold, administer, and utilize gifts and bequests of personal property for the purposes of aiding or facilitating the work of the Court. Gifts or bequests of money to the Court shall be covered into the Treasury.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4081;

amended Pub. L. 101-94, title II, § 204(a), Aug. 16, 1989, 103 Stat. 627; renumbered § 7281, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-82, § 7, Aug. 6, 1991, 105 Stat. 377.)

REFERENCES IN TEXT

The provisions of title 5 governing appointment in the competitive service, referred to in subsecs. (a) to (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4081 of this title as this section.

Subsec. (i). Pub. L. 102-82 added subsec. (i).

1989—Pub. L. 101-94 amended section generally. Prior to amendment, section read as follows: "The Court of Veterans Appeals may appoint such employees as may be necessary to execute the functions vested in the Court. Such appointments shall be made in accordance with the provisions of title 5 governing appointment in the competitive service, except that the Court may classify such positions based upon the classification of comparable positions in the judicial branch. The basic pay of such employees shall be fixed in accordance with subchapter III of chapter 53 of title 5."

EFFECTIVE DATE OF 1989 AMENDMENT

Section 204(c) of Pub. L. 101-94 provided that: "Notwithstanding section 401 of the Veterans' Judicial Review Act [Pub. L. 100-687, set out as an Effective Date note under section 7251 of this title], the authority provided by section 4081 [now 7281] of title 38, United States Code, as amended by subsection (a), shall take effect on the date of the enactment of this Act [Aug. 16, 1989]."

LIMITATION ON CONVERSION OF EMPLOYEES TO COMPETITIVE SERVICE

Section 204(b) of Pub. L. 101-94 provided that: "Notwithstanding clause (1)(A) of the proviso under the heading 'Court of Veterans Appeals' in chapter XI of [title I of] Public Law 101-45 [formerly set out below], no employee of the United States Court of Veterans Appeals may be converted to the competitive service without the approval of the Court."

APPOINTMENT OF EMPLOYEES ELIGIBLE FOR NONCOMPETITIVE CONVERSION TO POSITION IN COMPETITIVE SERVICE; PROCUREMENT OF EXPERTS AND CONSULTANTS

Pub. L. 101-45, title I, June 30, 1989, 103 Stat. 113, authorized United States Court of Veterans Appeals, during fiscal year 1989, to appoint not to exceed 35 employees to positions in competitive service if certain requirements were met and to procure services of experts and consultants.

§ 7282. Budget and expenditures

(a) The budget of the Court of Veterans Appeals as submitted by the Court for inclusion in the budget of the President for any fiscal year shall be included in that budget without review within the executive branch.

(b) The Court may make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals) as may be necessary to execute efficiently the functions vested in the Court.

(c) All expenditures of the Court shall be allowed and paid upon presentation of itemized vouchers signed by the certifying officer design-

nated by the chief judge. Except as provided in section 7285 of this title, all such expenditures shall be paid out of moneys appropriated for purposes of the Court.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4082; renumbered § 7282 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4082 of this title as this section.

Subsec. (c). Pub. L. 102-40, § 402(d)(1), substituted "7285" for "4085".

§ 7283. Disposition of fees

Except for amounts received pursuant to section 7285 of this title, all fees received by the Court of Veterans Appeals shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4083; renumbered § 7283 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4083 of this title as this section and substituted "7285" for "4085".

§ 7284. Fee for transcript of record

The Court of Veterans Appeals may fix a fee, not in excess of the fee authorized by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record of any proceeding before the Court, or for copying any record, entry, or other paper and the comparison and certification thereof.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4118, § 4084; renumbered § 7284, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4084 of this title as this section.

§ 7285. Practice fee

(a) The Court of Veterans Appeals may impose a periodic registration fee on persons admitted to practice before the Court. The frequency and amount of such fee shall be determined by the Court, except that such amount may not exceed \$30 per year.

(b) Amounts received by the Court under subsection (a) of this section shall be available to the Court for the purposes of (1) employing independent counsel to pursue disciplinary matters, and (2) defraying administrative costs for the implementation of the standards of proficiency prescribed for practice before the Court.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4119, § 4085; renumbered § 7285, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4085 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7282, 7283 of this title.

§ 7286. Judicial Conference of the Court of Veterans Appeals

The Chief Judge of the Court of Veterans Appeals may summon the judges of the Court to an annual judicial conference, at a time and place that the Chief Judge designates, for the purpose of considering the business of the Court and recommending means of improving the administration of justice within the Court's jurisdiction. The Court shall provide by its rules for representation and active participation at such conference by persons admitted to practice before the Court and by other persons active in the legal profession.

(Added Pub. L. 102-82, § 2(a), Aug. 6, 1991, 105 Stat. 375.)

SUBCHAPTER IV—DECISIONS AND REVIEW

§ 7291. Date when United States Court of Veterans Appeals decision becomes final

(a) A decision of the United States Court of Veterans Appeals shall become final upon the expiration of the time allowed for filing, under section 7292 of this title, a notice of appeal from such decision, if no such notice is duly filed within such time. If such a notice is filed within such time, such a decision shall become final—

(1) upon the expiration of the time allowed for filing a petition for certiorari with the Supreme Court of the United States, if the decision of the Court of Veterans Appeals is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit and no petition for certiorari is duly filed;

(2) upon the denial of a petition for certiorari, if the decision of the Court of Veterans Appeals is affirmed or the appeal is dismissed by the United States Court of Appeals for the Federal Circuit; or

(3) upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if that Court directs that the decision of the Court of Veterans Appeals be affirmed or the appeal dismissed.

(b)(1) If the Supreme Court directs that the decision of the Court of Veterans Appeals be modified or reversed, the decision of the Court of Veterans Appeals rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Court of Veterans Appeals shall become final when so corrected.

(2) If the decision of the Court of Veterans Appeals is modified or reversed by the United States Court of Appeals for the Federal Circuit and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Veterans Appeals rendered in accordance with the mandate of the United States Court of Appeals for the Federal Circuit shall become final upon the expiration of 30 days from the time such decision of the Court of Veterans Appeals was rendered, unless within such 30 days either the Secretary or the petitioner has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Court of Veterans Appeals shall become final when so corrected.

(c) If the Supreme Court orders a rehearing, or if the case is remanded by the United States Court of Appeals for the Federal Circuit to the Court of Veterans Appeals for a rehearing, and if—

(1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(2) the petition for certiorari has been denied, or

(3) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Veterans Appeals rendered upon such rehearing shall become final in the same manner as though no prior decision of the Court of Veterans Appeals had been rendered.

(d) As used in this section, the term "mandate", in case a mandate has been recalled before the expiration of 30 days from the date of issuance thereof, means the final mandate.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4119, § 4091; renumbered § 7291 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4091 of this title as this section.

Subsec. (a). Pub. L. 102-40, § 402(d)(1), substituted "7292" for "4092" in introductory provisions.

Subsec. (b). Pub. L. 102-83 substituted "Secretary" for "Administrator" in pars. (1) and (2).

8 7292. Review by United States Court of Appeals for the Federal Circuit

(a) After a decision of the United States Court of Veterans Appeals is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of any statute or regulation (other than a refusal to review the schedule of ratings for disabilities adopted under section 1155 of this title) or any

interpretation thereof (other than a determination as to a factual matter) that was relied on by the Court in making the decision. Such a review shall be obtained by filing a notice of appeal with the Court of Veterans Appeals within the time and in the manner prescribed for appeal to United States courts of appeals from United States district courts.

(b)(1) When a judge or panel of the Court of Veterans Appeals, in making an order not otherwise appealable under this section, determines that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion and that there is in fact a disagreement between the appellant and the Secretary with respect to that question of law and that the ultimate termination of the case may be materially advanced by the immediate consideration of that question, the judge or panel shall notify the chief judge of that determination. Upon receiving such a notification, the chief judge shall certify that such a question is presented, and any party to the case may then petition the Court of Appeals for the Federal Circuit to decide the question. That court may permit an interlocutory appeal to be taken on that question if such a petition is filed with it within 10 days after the certification by the chief judge of the Court of Veterans Appeals. Neither the application for, nor the granting of, an appeal under this paragraph shall stay proceedings in the Court of Veterans Appeals, unless a stay is ordered by a judge of the Court of Veterans Appeals or by the Court of Appeals for the Federal Circuit.

(2) For purposes of subsections (d) and (e) of this section, an order described in this paragraph shall be treated as a decision of the Court of Veterans Appeals.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under this section, and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision. The judgment of such court shall be final subject to review by the Supreme Court upon certiorari, in the manner provided in section 1254 of title 28.

(d)(1) The Court of Appeals for the Federal Circuit shall decide all relevant questions of law, including interpreting constitutional and statutory provisions. The court shall hold unlawful and set aside any regulation or any interpretation thereof (other than a determination as to a factual matter) that was relied upon in the decision of the Court of Veterans Appeals that the Court of Appeals for the Federal Circuit finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law.

(2) Except to the extent that an appeal under this chapter presents a constitutional issue, the Court of Appeals may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.

(e)(1) Upon such review, the Court of Appeals for the Federal Circuit shall have power to affirm or, if the decision of the Court of Veterans Appeals is not in accordance with law, to modify or reverse the decision of the Court of Veterans Appeals or to remand the matter, as appropriate.

(2) Rules for review of decisions of the Court of Veterans Appeals shall be those prescribed by the Supreme Court under section 2072 of title 28.

(Added Pub. L. 100-687, div. A, title III, § 301(a), Nov. 18, 1988, 102 Stat. 4120, § 4092; amended Pub. L. 101-94, title III, § 302(b), Aug. 16, 1989, 103 Stat. 628; renumbered § 7292, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, § 14(e)(5), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §§ 4(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 4092 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 5(c)(1), substituted "1155" for "355".

Subsec. (b)(1). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Subsec. (c). Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "United States Court" for "United States Courts".

1989—Subsec. (d)(1). Pub. L. 101-94 struck out "statute or" before "regulation".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-94 effective as if included in Pub. L. 100-687, div. A, see section 302(c) of Pub. L. 101-94, set out as a note under section 5701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7252, 7291 of this title.

SUBCHAPTER V—RETIREMENT AND SURVIVORS ANNUITIES

§ 7296. Retirement of judges

(a) For purposes of this section:

(1) The term "Court" means the United States Court of Veterans Appeals.

(2) The term "judge" means the chief judge or an associate judge of the Court.

(b)(1) A judge who meets the age and service requirements set forth in the following table may retire:

The judge has attained age:	And the years of service as a judge are at least
65.....	15
66.....	14
67.....	13
68.....	12
69.....	11
70.....	10

(2) A judge who is not reappointed following the expiration of the term for which appointed may retire upon the completion of that term if the judge has served as a judge of the Court for 15 years or more. In order to retire under this paragraph, a judge must, not earlier than 9 months preceding the date of the expiration of the judge's term of office and not later than 6 months preceding such date, advise the President in writing that the judge is willing to accept reappointment to the Court.

(3) A judge who becomes permanently disabled and as a result of that disability is unable to perform the duties of the office shall retire.

(c)(1) An individual who retires under subsection (b) of this section and elects under subsection (d) of this section to receive retired pay under this subsection shall (except as provided in paragraph (2) of this subsection) receive retired pay at the rate of pay in effect at the time of retirement.

(2) An individual who serves as a judge for less than 10 years and who retires under subsection (b)(3) of this section and elects under subsection (d) of this section to receive retired pay under this subsection shall receive retired pay at a rate equal to one-half of the rate of pay in effect at the time of retirement.

(3) Retired pay under this subsection shall begin to accrue on the day following the day on which the individual's salary as judge ceases to accrue and shall continue to accrue during the remainder of the individual's life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge.

(d)(1) A judge may elect to receive retired pay under subsection (c) of this section. Such an election—

(A) may be made only while an individual is a judge (except that, in the case of an individual who falls to be reappointed as judge at the expiration of a term of office, the election may be made at any time before the date after the day on which the individual's successor takes office); and

(B) may not be revoked after the retired pay begins to accrue.

(2) In the case of a judge other than the chief judge, such an election shall be made by filing notice of the election in writing with the chief judge. In the case of the chief judge, such an election shall be made by filing notice of the election in writing with the Director of the Office of Personnel Management.

(3) The chief judge shall transmit to the Director of the Office of Personnel Management a copy of each notice filed with the chief judge under this subsection.

(e) If an individual for whom an election to receive retired pay under subsection (c) is in effect accepts compensation for employment with the United States, the individual shall, to the extent of the amount of that compensation, forfeit all rights to retired pay under subsection (c) of this section for the period for which the compensation is received.

(f)(1) Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts

from basic pay, salary, and compensation) shall apply with respect to service as a judge as if this section had not been enacted.

(2) In the case of any individual who has filed an election to receive retired pay under subsection (c) of this section—

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as judge or otherwise) except as authorized by section 8440d of title 5;

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to that individual under subsection (c) of this section or from any other salary, pay, or compensation payable to that individual, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) or 8401(a) of title 5, whichever applies, upon making application therefor with the Office of Personnel Management.

(g)(1) A judge who becomes permanently disabled and as a result of that disability is unable to perform the duties of the office shall certify to the President in writing that such permanent disability exists. If the chief judge retires for such a disability, the retirement of the chief judge shall not take effect until concurred in by the President. If any other judge retires for such a disability, the chief judge shall furnish to the President a certificate of disability signed by the chief judge.

(2) Whenever the President finds that a judge has become permanently disabled and as a result of that disability is unable to perform the duties of the office, the President shall declare that judge to be retired. Before a judge may be retired under this paragraph, the judge shall be provided with a full specification of the reasons for the retirement and an opportunity to be heard.

(h)(1) An individual who has filed an election to receive retired pay under subsection (c) of this section may revoke such election at any time before the first day on which retired pay would (but for such revocation) begin to accrue with respect to such individual.

(2) Any revocation under this subsection shall be made by filing a notice of the election in writing with the Director of the Office of Personnel Management. The Office of Personnel Management shall transmit to the chief judge a copy of each notice filed under this subsection.

(3) In the case of a revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (c) of this section;

(B) for purposes of section 7297 of this title—

(i) the individual shall be treated as not having filed an election under section 7297(b) of this title, and

(ii) section 7297(e) of this title shall not apply and the amount credited to such individual's account (together with interest at 3 percent per year, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to the individual;

(C) no credit shall be allowed for any service as a judge of the Court unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest;

(D) the Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (d); and

(E) if subparagraphs (C) and (D) of this paragraph are complied with, service on the Court shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(i)(1) Beginning with the next pay period after the Director of the Office of Personnel Management receives a notice under subsection (d) of this section that a judge has elected to receive retired pay under this section, the Director shall deduct and withhold 1 percent of the salary of such judge. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Court of Veterans Appeals Judges Retirement Fund. Deductions under this subsection from the salary of a judge shall terminate upon the retirement of the judge or upon the completion of 15 years of service for which either deductions under this subsection or a deposit under subsection (j) of this section has been made, whichever occurs first.

(2) Each judge who makes an election under subsection (d) of this section shall be considered to agree to the deductions from salary which are made under paragraph (1) of this subsection.

(j) A judge who makes an election under subsection (d) of this section shall deposit, for service on the Court performed before the election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for the first years, not exceeding 15 years, of that service. Retired pay may not be allowed until a deposit required by this subsection has been made.

(k) The amounts deducted and withheld under subsection (i) of this section, and the amounts deposited under subsection (j) of this section, shall be deposited in the Court of Veterans Appeals Retirement Fund for credit to individual accounts in the name of each judge from whom such amounts are received.

(Added Pub. L. 101-94, title I, § 101(a), Aug. 16, 1989, 103 Stat. 617, § 4096; renumbered § 7296 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238,

239; Pub. L. 102-82, § 5(c)(1), Aug. 6, 1991, 105 Stat. 376; Pub. L. 102-198, § 7(c)(4)(D), Dec. 9, 1991, 105 Stat. 1625.)

REFERENCES IN TEXT

The civil service retirement laws, referred to in subsecs. (f)(1), (2)(A) and (h)(3)(C), are classified generally to subchapter III (§ 8331 et seq.) of chapter 83 of Title 5, Government Organization and Employees.

The Civil Service Retirement and Disability Fund, referred to in subsecs. (f)(2)(B) and (h)(3)(C), (D), is provided for in section 8348 of Title 5.

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4096 of this title as this section.

Subsec. (f)(2)(A). Pub. L. 102-198 substituted "8440d" for "8440c".

Puh. L. 102-82 inserted before semicolon at end "except as authorized by section 8440c of title 5".

Subsec. (h)(3)(B). Pub. L. 102-40, § 402(d)(1), substituted "7297" for "4097" in introductory provisions, "7297(b)" for "4097(b)" in cl. (1), and "7297(e)" for "4097(e)" in cl. (1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7297, 7298 of this title; title 5 sections 8334, 8402, 8440d; title 28 sections 178, 377.

§ 7297. Survivor annuities

(a) For purposes of this section:

(1) The term "Court" means the United States Court of Veterans Appeals.

(2) The term "judge" means the chief judge or an associate judge of the Court.

(3) The term "pay" means salary received under section 7253(e) of this title and retired pay received under section 7296(c) of this title.

(4) The term "retirement fund" means the Court of Veterans Appeals Retirement Fund established under section 7298 of this title.

(5) The term "surviving spouse" means a surviving spouse of an individual who (A) was married to such individual for at least two years immediately preceding the individual's death, or (B) is a parent of issue by the marriage.

(6) The term "dependent child" has the meaning given the term "child" in section 376(a)(5) of title 28.

(7) The term "Member of Congress" means a Representative, a Senator, a Delegate to Congress, or the Resident Commissioner of Puerto Rico.

(b) A judge may become a participant in the annuity program under this section by filing a written election under this subsection while in office. Any such election shall be made in such manner as may be prescribed by the Court.

(c) There shall be deducted and withheld each pay period from the pay of a judge who has made an election under subsection (b) of this section a sum equal to 3.5 percent of the judge's pay. Amounts so deducted and withheld shall be deposited in the retirement fund. A judge who makes an election under subsection (b) of this section shall be considered by that election to agree to the deductions from the judge's pay required by this subsection.

(d) A judge who makes an election under subsection (b) of this section shall deposit, with in-

terest at 3 percent per year compounded on December 31 of each year, to the credit of the retirement fund, an amount equal to 3.5 percent of the judge's pay and of the judge's basic salary, pay, or compensation for service as a Member of Congress, and for any other civilian service within the purview of section 8332 of title 5. Each such judge may elect to make such deposits in installments during the judge's period of service in such amount and under such conditions as may be determined in each instance by the chief judge. Notwithstanding the failure of a judge to make such deposit, credit shall be allowed for the service rendered, but the annual annuity of the surviving spouse of such judge shall be reduced by an amount equal to 10 percent of the amount of such deposit, computed as of the date of the death of such judge, unless the surviving spouse elects to eliminate such service entirely from credit under subsection (k) of this section. However, a deposit shall not be required from a judge for any year with respect to which deductions from the judge's pay, or a deposit, were actually made (and not withdrawn) under the civil service retirement laws.

(e) If the service of a judge who makes an election under subsection (b) of this section terminates other than pursuant to the provisions of section 7296 of this title, or if any judge ceases to be married after making the election under subsection (b) of this section and revokes (in a writing filed as provided in subsection (b) of this section) such election, the amount credited to the judge's individual account (together with interest at 3 percent per year compounded on December 31 of each year to the date of the judge's relinquishment of office) shall be returned to the judge. For the purpose of this section, the service of a judge making an election under subsection (b) of this section shall be considered to have terminated pursuant to section 7296 of this title if—

(1) the judge is not reappointed following expiration of the term for which appointed; and

(2) at or before the time of the expiration of that term, the judge is eligible for and elects to receive retired pay under section 7296 of this title.

(f)(1) If a judge who makes an election under subsection (b) of this section dies after having rendered at least 5 years of civilian service (computed as prescribed in subsection (i) of this section), for the last 5 years of which the salary deductions provided for by subsection (c) of this section or the deposits required by subsection (d) of this section have actually been made (and not withdrawn) or the salary deductions required by the civil service retirement laws have actually been made (and not withdrawn)—

(A) if the judge is survived by a surviving spouse but not by a dependent child, there shall be paid to the surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (k) of this section; or

(B) If the judge is survived by a surviving spouse and a dependent child or children, there shall be paid to the surviving spouse an immediate annuity in an amount computed as provided in subsection (k) of this section and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(i) 10 percent of the average annual pay of such judge (determined in accordance with subsection (k) of this section), or

(ii) 20 percent of such average annual pay, divided by the number of such children; or

(C) If the judge is not survived by a surviving spouse but is survived by a dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

(i) 20 percent of the average annual pay of such judge (determined in accordance with subsection (k) of this section), or

(ii) 40 percent of such average annual pay, divided by the number of such children.

(2) The annuity payable to a surviving spouse under this subsection shall be terminated—

(A) upon the surviving spouse's death; or

(B) upon the remarriage of the surviving spouse before age 55.

(3) The annuity payable to a child under this subsection shall be terminated upon the child's death.

(4) In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving the spouse, the annuity of such child or children under paragraph (1)(B) of this subsection shall be recomputed and paid as provided in paragraph (1)(C) of this subsection. In any case in which the annuity of a dependent child is terminated, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived the judge.

(g) Questions of family relationships, dependency, and disability arising under this section shall be determined in the same manner as such questions arising under chapter 84 of title 5 are determined.

(h)(1) If—

(A) a judge making an election under subsection (b) of this section dies while in office (i) before having rendered 5 years of civilian service computed as prescribed in subsection (l) of this section, or (ii) after having rendered 5 years of such civilian service but without a survivor entitled to annuity benefits provided by subsection (f) of this section; or

(B) the right of all persons entitled to an annuity under subsection (f) of this section based on the service of such judge terminates before a claim for such benefits has been established,

the total amount credited to the individual account of such judge (with interest at 3 percent per year, compounded on December 31 of each year, to the date of the death of such judge) shall be paid in the manner specified in paragraph (2) of this subsection.

(2) An amount payable under paragraph (1) of this subsection shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence:

(A) To the beneficiary or beneficiaries whom the judge designated in writing filed before death with the chief judge (except that in the case of the chief judge such designation shall be filed before death as prescribed by the Court).

(B) To the surviving spouse of the judge.

(C) To the child or children of the judge (and the descendants of any deceased children by representation).

(D) To the parents of the judge or the survivor of them.

(E) To the executor or administrator of the estate of the judge.

(F) To such other next of kin of the judge as may be determined by the chief judge to be entitled under the laws of the domicile of the judge at the time of the judge's death.

(3) Determination as to the surviving spouse, child, or parent of a judge for the purposes of paragraph (2) of this subsection shall be made without regard to the definitions in subsection (a) of this section.

(4) Payment under this subsection in the manner provided in this subsection shall be a bar to recovery by any other person.

(5) In a case in which the annuities of all persons entitled to annuity based upon the service of a judge terminate before the aggregate amount of annuity paid equals the total amount credited to the individual account of such judge (with interest at 3 percent per year, compounded on December 31 of each year to the date of the death of the judge), the difference shall be paid, upon establishment of a valid claim therefor, in the order of precedence prescribed in paragraph (2) of this subsection.

(6) Any accrued annuity remaining unpaid upon the termination (other than by death) of the annuity of any individual based upon the service of a judge shall be paid to that individual. Any accrued annuity remaining unpaid upon the death of an individual receiving an annuity based upon the service of a judge shall be paid, upon the establishment of a valid claim therefor, in the following order of precedence:

(A) To the executor or administrator of the estate of that person.

(B) After 30 days after the date of the death of such individual, to such individual or individuals as may appear in the judgment of the chief judge to be legally entitled thereto.

Such payment shall be a bar to recovery by any other individual.

(i) When a payment under this section is to be made to a minor, or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, the payment may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of such claimant or is otherwise legally vested with the care of the claimant or the claimant's estate. If no

guardian or other fiduciary of the person under legal disability has been appointed under the laws of the State of residence of the claimant, the chief judge shall determine the person who is otherwise legally vested with the care of the claimant or the claimant's estate.

(j) Annuities under this section shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity has accrued. An annuity under this section is not assignable, either in law or in equity, or subject to execution, levy, attachment, garnishment, or other legal process.

(k)(1) The annuity of the surviving spouse of a judge making an election under subsection (b) of this section shall be an amount equal to the sum of the following:

(A) The product of—

(i) 1.5 percent of the judge's average annual pay; and

(ii) the sum of the judge's years of judicial service, the judge's years of prior allowable service as a Member of Congress, the judge's years of prior allowable service performed as a member of the Armed Forces, and the judge's years, not exceeding 15, of prior allowable service performed as a congressional employee (as defined in section 2107 of title 5).

(B) Three-fourths of 1 percent of the judge's average annual pay multiplied by the judge's years of allowable service not counted under subparagraph (A) of this paragraph.

(2) An annuity computed under this subsection may not exceed 50 percent of the judge's average annual pay and may not be less than 25 percent of such average annual pay. Such annuity shall be further reduced in accordance with subsection (d) of this section (if applicable).

(3) For purposes of this subsection, the term "average annual pay", with respect to a judge, means the average annual pay received by the judge for judicial service (including periods in which the judge received retired pay under section 7296(d) of this title) or for any other prior allowable service during the period of three consecutive years in which the judge received the largest such average annual pay.

(l) Subject to subsection (d) of this section, the years of service of a judge which are allowable as the basis for calculating the amount of the annuity of the judge's surviving spouse shall include the judge's years of service as a judge of the Court, the judge's years of service as a Member of Congress, the judge's years of active service as a member of the Armed Forces not exceeding 5 years in the aggregate and not including any such service for which credit is allowed for the purposes of retirement or retired pay under any other provision of law, and the judge's years of any other civilian service within the purview of section 8332 of title 5.

(m) Nothing contained in this section shall be construed to prevent a surviving spouse eligible therefor from simultaneously receiving an annuity under this section and any annuity to which such spouse would otherwise be entitled

under any other law without regard to this section, but in computing such other annuity service used in the computation of such spouse's annuity under this section shall not be credited.

(n) A judge making an election under subsection (b) of this section shall, at the time of such election, waive all benefits under the civil service retirement laws except section 8440d of title 5. Such a waiver shall be made in the same manner and shall have the same force and effect as an election filed under section 7296(d) of this title.

(o) Whenever the salaries of judges paid under section 7253(e) of this title are increased, each annuity payable from the retirement fund which is based, in whole or in part, upon a deceased judge having rendered some portion of that judge's final 18 months of service as a judge of the Court, shall also be increased. The amount of the increase in the annuity shall be determined by multiplying the amount of the annuity on the date on which the increase in salaries becomes effective by 3 percent for each full 5 percent by which those salaries were increased.

(Added Pub. L. 101-94, title I, § 101(a), Aug. 16, 1989, 103 Stat. 620, § 4097; renumbered § 7297 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, § 14(e)(6), June 13, 1991, 105 Stat. 287; Pub. L. 102-82, § 5(c)(2), Aug. 6, 1991, 105 Stat. 378; Pub. L. 102-198, § 7(c)(4)(E), Dec. 9, 1991, 105 Stat. 1625.)

REFERENCES IN TEXT

The civil service retirement laws, referred to in subsections (d), (f)(1), and (n), are classified generally to subchapter III (§ 8331 et seq.) of chapter 83 of Title 5, Government Organization and Employees.

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4097 of this title as this section.

Subsec. (a)(3). Pub. L. 102-40, § 402(d)(1), substituted "7253(e)" for "4053(e)" and "7296(c)" for "4096(c)".

Subsec. (a)(4). Pub. L. 102-40, § 402(d)(1), substituted "7298" for "4098".

Subsec. (e). Pub. L. 102-40, § 402(d)(1), substituted "7296" for "4096" wherever appearing.

Subsec. (h)(1)(A)(i). Pub. L. 102-54 amended subsec. (h)(1)(A)(i) as in effect immediately before the enactment of Pub. L. 102-40 by substituting "subsection (l)" for "subsection (1)".

Subsec. (k)(3). Pub. L. 102-40, § 402(d)(1), substituted "7296(d)" for "4096(d)".

Subsec. (n). Pub. L. 102-198 substituted "8440d" for "8440c".

Pub. L. 102-82 inserted "except section 8440c of title 5" before period at end of first sentence.

Pub. L. 102-40, § 402(d)(1), substituted "7296(d)" for "4096(d)".

Subsec. (o). Pub. L. 102-40, § 402(d)(1), substituted "7253(e)" for "4053(e)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7296, 7298 of this title.

§ 7298. Court of Veterans Appeals Retirement Fund

(a) There is established in the Treasury a fund known as the Court of Veterans Appeals Retirement Fund.

(b) Amounts in the fund are available for the payment of judges' retired pay under section 7296 of this title and of annuities, refunds, and allowances under section 7297 of this title.

(c) Amounts deposited by, or deducted and withheld from the salary and retired pay of, a judge under section 7296 or 7297 of this title shall be deposited in the fund and credited to an individual account of the judge.

(d) The chief judge of the Court of Veterans Appeals shall submit to the President an annual estimate of the expenditures and appropriations necessary for the maintenance and operation of the fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law.

(e)(1) The chief judge may cause periodic examinations of the retirement fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose.

(2)(A) Subject to the availability of appropriations, there shall be deposited in the Treasury to the credit of the retirement fund, not later than the close of each fiscal year, such amounts as may be required to reduce to zero the unfunded liability (if any) of the fund. Such deposits shall be taken from sums available for that fiscal year for the payment of the expenses of the Court.

(B) For purposes of subparagraph (A) of this paragraph, the term "unfunded liability", with respect to any fiscal year, means the amount estimated by the chief judge to be equal to the excess (as of the close of that fiscal year) of—

(i) the present value of all benefits payable from the fund (determined on an annual basis in accordance with section 9503 of title 31), over

(ii) the sum of—

(I) the present values of future deductions under sections 7296(i) and 7297(c) of this title and future deposits under sections 7296(j) and 7296(d) of this title, and

(II) the balance in the fund as of the close of the fiscal year.

(C) Amounts deposited in the retirement fund under this paragraph shall not be credited to the account of any individual.

(f) The Secretary of the Treasury shall invest from time to time, in interest-bearing securities of the United States, such portions of the retirement fund as in such Secretary's judgment may not be immediately required for payments from the fund. The income derived from such investments shall constitute a part of the fund.

(Added Pub. L. 101-94, title I, § 101(a), Aug. 16, 1989, 103 Stat. 625, § 4098; renumbered § 7298 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239.)

AMENDMENTS

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 4098 of this title as this section.

Subsecs. (b), (c). Pub. L. 102-40, § 402(d)(1), substituted "7296" for "4098" and "7297" for "4097".

Subsec. (e)(2)(B)(ii)(I). Pub. L. 102-40, § 402(d)(1), substituted "7296(i) and 7297(c)" for "4098(i) and 4097(c)" and "7296(j) and 7296(d)" for "4098(j) and 4096(d)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7297 of this title.

CHAPTER 73—VETERANS HEALTH ADMINISTRATION—ORGANIZATION AND FUNCTIONS

SUBCHAPTER I—ORGANIZATION

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- 7301. Functions of Veterans Health Administration: in general.
- 7302. Functions of Veterans Health Administration: health-care personnel education and training programs.
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- 7304. Regulations.
- 7305. Divisions of Veterans Health Administration.
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SUBCHAPTER II—GENERAL AUTHORITY AND ADMINISTRATION

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- 7312. Special medical advisory group.
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- 7315. Geriatrics and Gerontology Advisory Committee.
- 7316. Malpractice and negligence suits: defense by United States.
- 7317. Hazardous research projects: indemnification of contractors.
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SUBCHAPTER III—PATIENT RIGHTS¹

- 7331. Informed consent.
- 7332. Confidentiality of certain medical records.
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SUBCHAPTER IV—RESEARCH CORPORATIONS

- 7361. Authority to establish; status.
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- 7364. General powers.
- 7365. Applicable State law.
- 7366. Accountability and oversight.
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- 7368. Expiration of authority.

AMENDMENTS

1992—Pub. L. 102-585, title V, § 511(a)(2), Nov. 4, 1992, 106 Stat. 4956, added item 7318.

Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984, substituted "Under Secretary for Health" for "Chief Medical Director" in item 7306.

1991—Pub. L. 102-40, title IV, § 401(a)(1), (3), May 7, 1991, 105 Stat. 219, substituted "VETERANS HEALTH ADMINISTRATION—ORGANIZATION AND FUNCTIONS" for "DEPARTMENT OF MEDICINE AND SURGERY" as chapter heading, added analysis for subchapters I to IV, and struck out former analysis consisting of subchapter I containing items 4101 to 4119 and 4210, subchapter II containing items 4121 to 4124, subchapter III containing items 4131 to 4134, subchapter IV containing items 4141 and 4142, subchapter V containing items 4151 and 4152, and subchapter VI containing items 4161 to 4168.

1990—Pub. L. 101-366, title I, § 102(d), Aug. 15, 1990, 104 Stat. 436, added heading for subchapter IV and items 4141 and 4142.

¹ So in original. Does not conform to subchapter heading.